

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VALERIE PARKER,

Plaintiff,

CIVIL ACTION NO. 07-CV-14780-DT

vs.

DISTRICT JUDGE DAVID M. LAWSON

DETROIT SPORTSERVICE,
INC.,

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendant.

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REPORT AND RECOMMENDATION

I. **RECOMMENDATION:** Plaintiff's Motion for Default Judgment (docket no. 12) should be **DENIED**.

II. **REPORT:**

A. *Factual Background*

Plaintiff filed this Motion for Default Judgment on January 22, 2008. (Docket no. 12). Defendant filed a Response on January 25, 2008. (Docket no. 17). Pretrial matters have been referred to the undersigned for consideration. (Docket no. 5). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). This motion is now ready for ruling.

B. *Standard*

The plaintiff bears the burden of showing that the defendant against whom the plaintiff is seeking default judgment has been properly served. *Keller v. Owens*, 2007 WL 2702947 (D. Kan. Sept. 14, 2007) (unpublished); *Everetson v. Topeka Ass'n For Retarded Citizens*, 2005 WL 2988716 (D. Kan. Oct. 11, 2005) (unpublished). Under Rule 12(a), Fed. R. Civ. P., a defendant shall serve

an answer to a complaint “within 20 days after being served with the summons and complaint.” Fed. R. Civ. P. 12(a)(1)(A).

C. Analysis

Plaintiff has failed to carry her burden of showing that she is entitled to a default judgment. Plaintiff failed to submit any document showing that service was made upon Defendant. (Docket no. 12). Defendant has attached to its Response a copy of the Acknowledgment of Receipt of Summons and Complaint that it returned to the U.S. Marshal after it received a copy of the Summons and Complaint by mail.¹ (Docket no. 17, ex. 3). The Attorney for Defendant in that Acknowledgment states that Defendant received a copy of the Summons and Complaint on January 7, 2008. Plaintiff has not shown that Defendant was served at any time prior to this January 7, 2008 date. Under Rule 12(a), Defendant had twenty days after that date to serve an answer. Defendant filed and served its Answer on January 25, 2008. (Docket no. 16). This was before its twenty-day period expired on January 28, 2008. Therefore, Defendant timely served its Answer, and Plaintiff’s Motion for Default Judgment should be denied.

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec’y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

¹ Defendant contends that its Acknowledgment of Receipt is a waiver of service under Fed. R. Civ. P. 4(d). However, the copy of the Acknowledgment states that the Summons and Complaint are being served rather than service being waived.

Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec’y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed’n Of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as “Objection #1,” “Objection #2,” etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: March 03, 2008

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon Valerie Parker and Counsel of Record on this date.

Dated: March 03, 2008

s/ Lisa C. Bartlett
Courtroom Deputy